

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Natnari Linwong	Team: Team # 2	CCRB Case #: 201115573	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 12/02/2011 5:10 PM	Location of Incident: East 148th Street and Third Avenue; 40th Precinct Stationhouse	Precinct: 40	18 Mo. SOL 6/2/2013	EO SOL 6/2/2013	
Date/Time CV Reported Fri, 12/02/2011 10:42 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 12/02/2011 10:42 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Roberto Suarez	09774	943850	PSA 7
2. POM Jhonatan Hernandez	25850	935015	PSA 7
3. SGT Joseph Tompkins	05415	939587	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michael Lavecchia	02339	927061	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jhonatan Hernandez	Abuse: At East 148th Street and Third Avenue in the Bronx, Officer Jhonatan Hernandez stopped § 87(2)(b)	
B.POM Roberto Suarez	Abuse: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez stopped § 87(2)(b)	
C.POM Roberto Suarez	Abuse: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez frisked § 87(2)(b)	
D.POM Roberto Suarez	Abuse: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez searched § 87(2)(b)	
E.POM Roberto Suarez	Abuse: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez seized § 87(2)(b)s property.	
F.SGT Joseph Tompkins	Abuse: At the 40th Precinct stationhouse, Sergeant Joseph Tompkins did not process § 87(2)(b)s complaint regarding officers.	
G.SGT Joseph Tompkins	Abuse: At the 40th Precinct stationhouse, Sergeant Joseph Tompkins threatened to arrest § 87(2)(b)	

Case Summary

On December 2, 2011, § 87(2)(b) filed a complaint with the CCRB online (encl. 3A-L).

On December 2, 2011, around 5:10 p.m., § 87(2)(b) was walking at East 148th Street and Third Avenue in the Bronx when he was approached by two officers. He subsequently went to the 40th Precinct around 6:40 p.m. on the same date to obtain a CCRB form. He was not arrested or issued a summons. The following allegations resulted from the incidents:

- **Allegation A – Abuse of Authority: At East 148th Street and Third Avenue in the Bronx, Officer Jhonatan Hernandez stopped § 87(2)(b)**
- **Allegation B – Abuse of Authority: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez stopped § 87(2)(b)**
§ 87(2)(g)
- **Allegation C – Abuse of Authority: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez frisked § 87(2)(b) at East 148th Street and Third Avenue in the Bronx.**
- **Allegation D – Abuse of Authority: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez searched § 87(2)(b)**
§ 87(2)(g)
- **Allegation E – Abuse of Authority: At East 148th Street and Third Avenue in the Bronx, Officer Roberto Suarez seized § 87(2)(b)'s property.**
§ 87(2)(g)
- **Allegation F – Abuse of Authority: At the 40th Precinct stationhouse, Sergeant Joseph Tompkins did not process § 87(2)(b)'s complaint regarding officers at the 40th Precinct stationhouse**
- **Allegation G – Abuse of Authority: At the 40th Precinct stationhouse, Sergeant Joseph Tompkins threatened to arrest § 87(2)(b)**
§ 87(2)(g)

Mediation was offered to § 87(2)(b) on December 15, 2011, but he rejected it.

Results of Investigation

Civilian Statements

Complainant/Victim: § 87(2)(b)

- *Hispanic male, age § 87(2)(b), 6'1" tall and 250 lbs. with black hair and brown eyes.*
- § 87(2)(b).

CCRB Testimony

On December 13, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 4A-E).

5:10 p.m., 148th Street and Third Avenue

On December 2, 2011, around 5:10 p.m., § 87(2)(b) entered his apartment at § 87(2)(b) § 87(2)(b) in the Bronx. § 87(2)(b) had just been to an eye clinic, and went to his apartment to pick up \$200 to pay for glasses. He did not see any police officers on his way to his apartment building. He was inside his apartment for less than a minute and left again to return to the eye clinic. He wore jeans and a hoodie and had his wallet, the cash, and his phone in his pockets. He did not have any bags and was not carrying anything in his hands.

At 148th Street and Third Avenue, about a block away from his apartment, two officers approached him in a marked PSA 7 patrol car, and the passenger, who was identified through investigation as Officer Jhonatan Hernandez, asked him twice where he was coming from, and § 87(2)(b) said he was coming from his home and was minding his business. Officer Hernandez told § 87(2)(b) to stay where he was, which he did.

The officers stopped the car, and Officer Hernandez exited and approached § 87(2)(b) on foot. Officer Hernandez patted down § 87(2)(b)'s pants pockets and put his right hand in § 87(2)(b)'s right pocket. § 87(2)(b) backed away from him, and Officer Hernandez asked him for ID. § 87(2)(b) took his wallet out of his pocket and gave Officer Hernandez his ID. He told Officer Hernandez that he lived nearby at 147th Street and Willis Avenue, and Officer Hernandez told him that this situation could have been avoided. He saw that § 87(2)(b) also had a PBA card in his hand and asked who he knew on the force. § 87(2)(b) explained that § 87(2)(b)

As § 87(2)(b) spoke to Officer Hernandez, the driver, identified through investigation as Officer Roberto Suarez, exited the vehicle and told § 87(2)(b) that the officers had seen him enter and exit § 87(2)(b), and that there was a lot of drug activity in that building. § 87(2)(b) asked what that had to do with him and reached for his cell phone to call his brother. Officer Suarez told him to put the phone away because it could be a weapon. § 87(2)(b) said Officer Suarez knew it was not a weapon. He then called his brother and told him that he was being harassed by two officers. Officer Hernandez asked to speak to § 87(2)(b) and § 87(2)(b) handed him the phone.

While Officer Hernandez spoke to § 87(2)(b) Officer Suarez explained to § 87(2)(b) why he should not have his phone out and that he could have been recording the interaction. § 87(2)(b) did not hear any of Officer Hernandez's conversation with his brother until the end, when Officer Hernandez said, "I see where this is going," and handed the phone back to § 87(2)(b). He had spoken to § 87(2)(b) for approximately three minutes.

Officer Hernandez then handed § 87(2)(b)'s ID back to him, snatched his PBA card out of his hand, and told him that if § 87(2)(b) wanted it back, § 87(2)(b) could tell him to pick it up from Officer Hernandez. Both officers returned to the vehicle and drove away. The stop lasted about five minutes. The officers did not take § 87(2)(b)'s ID back to their car, and he did not believe they had run a warrant check on it.

6:40 p.m., 40th Precinct Stationhouse

About an hour and a half after the stop occurred, § 87(2)(b) went to the 40th Precinct stationhouse to pick up a CCRB form because he wished to file a complaint against the officers. He spoke to the officer behind the front desk, who was a white male in his early or mid-40s, approximately 6'0" and heavyset with hazel eyes and dirty-blond hair. He wore a navy blue

turtleneck and a navy blue NYPD windbreaker. This officer was identified through investigation as Sergeant Joseph Tompkins.

§ 87(2)(b) asked Sergeant Tompkins for a civilian complaint form, and Sergeant Tompkins asked him what was going on. § 87(2)(b) said he just wanted the form, and Sergeant Tompkins asked him twice more what had happened. § 87(2)(b) said he wanted the form so he could take it home and fill it out. After speaking to Sergeant Tompkins for less than a minute without obtaining the form, § 87(2)(b) again called his brother.

Sergeant Tompkins asked who he was calling, and § 87(2)(b) repeated his request for the form. Sergeant Tompkins told § 87(2)(b) just to talk to him and to hang up the phone. He also told § 87(2)(b) that they did not carry the forms at the precinct. Finally, after § 87(2)(b) has been in the precinct for about three minutes, Sergeant Tompkins said, "Do me a favor, get out of here before I lock you up for loitering." § 87(2)(b) then left the precinct. At no point did Sergeant Tompkins give § 87(2)(b) a complaint form or offer any other information about how to file a complaint.

Witness: § 87(2)(b)

- *Hispanic male, age § 87(2)(b), 5'8" tall and 182 lbs. with black hair and brown eyes.*
- § 87(2)(b)

CCRB Testimony

On January 3, 2012, § 87(2)(b) was interviewed at the CCRB (encl. 5A-E).

On December 2, 2011 around 5:10 p.m., § 87(2)(b) called § 87(2)(b) and said he had been stopped and searched by two officers for no reason as he exited his apartment building on his way to an optical clinic. § 87(2)(b) heard Officer Hernandez tell § 87(2)(b) to put the phone away. § 87(2)(b) told Officer Hernandez that he had a right to be on the phone, and that his brother was on the line.

Officer Hernandez got on the phone, and § 87(2)(b) asked him the reason for the stop. Officer Hernandez told him that § 87(2)(b) had exited a known drug location, and § 87(2)(b) said that did not constitute reasonable suspicion and that his brother's building was a housing development, not a crack den. Officer Hernandez then became upset and said that he knew which way § 87(2)(b) was going, and gave the phone back to § 87(2)(b) who ended the conversation.

Immediately after the first incident, § 87(2)(b) told § 87(2)(b) to go to the precinct and file a CCRB complaint. Between half an hour and forty-five minutes later, § 87(2)(b) called him again and said he was at the 40th Precinct and that the desk officer, identified through investigation as Sergeant Tompkins, was refusing to give him a complaint form. § 87(2)(b) heard Sergeant Tompkins tell § 87(2)(b) "Tell me what happened." § 87(2)(b) asked Sergeant Tompkins for a CCRB form for him to fill out at home, and Sergeant Tompkins again told § 87(2)(b) to tell him what happened. Over the course of two or three minutes, § 87(2)(b) heard § 87(2)(b) request a CCRB form from Sergeant Tompkins three or four times. Each time, Sergeant Tompkins refused to give him the form and asked him what happened.

Sergeant Tompkins then said, "I don't know what forms you're talking about. We don't have those forms here. Get out of here before I lock you up for loitering." § 87(2)(b) then left the precinct, and § 87(2)(b) told him to call IAB to make a complaint. At no point did

Sergeant Tompkins provide § 87(2)(b) with any information about how to file a complaint.

Photo Viewing (encl. 10A-GG)

A photo viewing was conducted with § 87(2)(b) on February 21, 2012, in order to identify the officer who allegedly refused to process his complaint and threatened to arrest him, as well as any officers who may have witnessed this interaction at the 40th Precinct stationhouse. § 87(2)(b) was shown photographs of sixteen officers who are either white male supervisors or who, according to the roll call and interrupted patrol log, were in the stationhouse at the time of the incident. He identified Sergeant Joseph Tompkins as the officer he spoke to at the stationhouse. He did not recognize any of the other officers as having been present, including Sergeant Michael LaVecchia, who is listed on the roll call as the desk officer.

NYPD Statements:

Subject Officer: OFFICER ROBERTO SUAREZ

- *Hispanic male, age § 87(2)(b), 5'11" tall and 195 lbs., bald with hazel eyes.*
- *On December 2, 2011, Officer Suarez worked from 3:00 p.m. until 11:35 p.m. He was assigned to Sector E with Officer Jhonatan Hernandez. They were dressed in uniform and assigned to a marked SUV.*

Memo Book

At 4:55 p.m., vertical patrol at § 87(2)(b). At 5:05 p.m., male stopped for criminal trespassing. At 5:10 p.m., prepared stop-and-frisk report.

CCRB Testimony

Officer Suarez was interviewed at the CCRB on January 11, 2012 (encl. 6A-D).

On December 2, 2011, at 4:55 p.m., Officers Suarez and Hernandez began a vertical patrol of § 87(2)(b) in the Bronx. They saw § 87(2)(b) enter the building by having someone else let him in rather than using a key. The officers proceeded upstairs for the vertical patrol, then came downstairs. As they came downstairs, they saw § 87(2)(b) standing in the stairwell. When he saw the officers approach, he walked downstairs and exited the building.

The officers followed § 87(2)(b) and stopped him at 148th Street and Third Avenue. Officer Suarez asked him if he lived in the building, what he was doing in the building, and if he knew anyone in the building. § 87(2)(b) refused to answer Officer Suarez's questions and kept repeating that he knew his rights and the officers did not have any reason to stop him. He did not say that he lived in the building.

Officer Suarez asked § 87(2)(b) for his ID, which he refused to provide. § 87(2)(b) had his hands in his pockets, and when Officer Hernandez instructed him to remove his hands from his pockets, he would do so, but then would put his hands back in his pockets. Officer Suarez saw a bulge in § 87(2)(b)'s right pocket and patted down both pants pockets to ensure that he did not have a weapon. The bulge turned out to be a cell phone. Officer Suarez did not put his hands inside § 87(2)(b)'s pockets at any point. § 87(2)(b) was not holding anything in his hands.

§ 87(2)(b) called his brother, § 87(2)(b) and put him on the phone with Officer Suarez. Officer Suarez asked § 87(2)(b) to tell § 87(2)(b) not to put his hands in his pockets because the officers did not know what was in his pockets. § 87(2)(b) asked the reason for the stop, and Officer Suarez said that they had seen § 87(2)(b).

§ 87(2)(b) in the building and stopped him for criminal trespassing because they did not know if he lived there and wanted to find out what his business was there. § 87(2)(b) said that was not a valid reason for the stop. Officer Suarez ended the conversation because it was unproductive.

After Officer Suarez got off the phone, § 87(2)(b) gave the officers his ID as well as a PBA card. Officer Suarez took the card because it was PBA property. It was not vouchered because Officer Suarez returned it to the PBA.

The stop lasted approximately five minutes and took place approximately ten minutes after the officers had first seen § 87(2)(b) enter the building. Officer Hernandez did not have any physical contact with § 87(2)(b). At no point prior to the stop did the officers see § 87(2)(b) interact with any other individuals. Officer Suarez prepared a stop-and-frisk report following the incident and filed it on the same day.

Subject Officer: OFFICER JHONATAN HERNANDEZ

- *Hispanic male, age § 87(2)(b), 6'2" tall and 350 lbs. with black hair and brown eyes.*
- *On December 2, 2011, Officer Hernandez was assigned to Sector E with Officer Suarez from 3:00 p.m. until 11:35 p.m. He was dressed in uniform and assigned to a marked patrol car.*

Memo Book

At 4:55 p.m., vertical patrol at § 87(2)(b) § 87(2)(b). At 5:05 p.m., male stopped for criminal trespassing. At 5:10 p.m., stop-and-frisk report prepared.

CCRB Testimony

Officer Hernandez was interviewed at the CCRB on February 1, 2012 (encl. 7A-E).

At 4:55 p.m. on December 2, 2011, Officers Hernandez and Suarez were outside East 147th Street in the Bronx when they saw § 87(2)(b) enter the building. They then entered the building to conduct a vertical patrol. § 87(2)(b) exited the building between three and five minutes later, when the officers were in a stairwell. Because he had been inside the building, which is a drug-prone location, for only a short time, Officers Hernandez and Suarez suspected that § 87(2)(b) had purchased drugs. They followed him out of the building and stopped him. They had not seen where § 87(2)(b) went or what he did inside the building, and did not see him interact with anyone. He was not holding anything. He had a bulge in the area of his pants pocket. Officer Hernandez was unable to describe the size and shape of the bulge.

The officers asked § 87(2)(b) whether he lived in the building, and he refused to answer. Officer Hernandez did not recall who specifically spoke to § 87(2)(b). The officers asked § 87(2)(b) for his ID, which he refused to provide. After repeated requests, § 87(2)(b) provided his ID as well as a PBA card. Throughout the interaction with the officers, he kept his hands in his pockets and refused to remove them after Officer Hernandez instructed him to do so. Because of the bulge in § 87(2)(b)'s pocket and his refusal to take his hands out of his pockets, Officer Suarez frisked § 87(2)(b) patting down his pants pockets. § 87(2)(b) took his hands out of his pockets during the frisk. Officer Suarez did not place his hands inside § 87(2)(b)'s pockets. The frisk did not yield any weapons. The bulge was § 87(2)(b)'s cell phone.

After the frisk, § 87(2)(b) called his brother, then gave the phone to Officer Suarez. Officer Suarez spoke briefly with § 87(2)(b). The officers then told § 87(2)(b) that § 87(2)(b) he should know better than to act the way he

had and that they had needed to verify that he lived in the building for his own safety. § 87(2)(b) was angry and said that the officers had stopped him for no reason. Officer Suarez took § 87(2)(b)'s PBA card. It was not vouchered because it was returned to the PBA. The stop lasted approximately five minutes.

Officer Hernandez was shown the stop-and-frisk report Officer Suarez filed for the incident, which indicated that one of the reasons for the stop was actions indicative of acting as a lookout. Officer Hernandez stated that he did not observe § 87(2)(b) take any such actions.

Subject Officer: SERGEANT JOSEPH TOMPKINS

- *White male, age § 87(2)(b), 6'1" tall and 340 lbs. with blond hair and blue eyes.*
- *Sergeant Tompkins' memo book and the roll call indicate that he was assigned to work as patrol supervisor in marked vehicle #3537 on December 2, 2011, from 2:50 p.m. until 11:47 p.m. However, he stated in his CCRB interview that he worked as the desk officer during that period. He was dressed in uniform.*

Memo Book

Sergeant Tompkins had no memo book entries regarding this incident. His memo book states that he went on patrol at 4:45 p.m.

CCRB Testimony

Sergeant Tompkins was interviewed at the CCRB on March 27, 2012 (encl. 9A-D).

Sergeant Tompkins had no recollection of the incident. He did not recall anyone asking him or any other officer for a CCRB form during his tour, nor did he remember anyone loitering in or refusing to leave the precinct. He was shown § 87(2)(b)'s photograph but did not recognize him. Had anyone requested a CCRB form, Sergeant Tompkins would have provided one and noted the interaction in the command log. He did not recall if there were any other officers working around the desk. He was shown the roll call, but it did not refresh his memory. Usually the only other officer present is the telephone switchboard operator, but there is none listed on the roll call for that tour.

Witness Officer: SERGEANT MICHAEL LAVECCHIA

- *White male, age § 87(2)(b), 5'11" tall and 240 lbs. with black hair and brown eyes.*
- *On December 2, 2011, Sergeant LaVecchia worked as the desk officer from 2:50 p.m. until 11:47 p.m. He was dressed in uniform and was not assigned a partner or a motor vehicle.*

Memo Book

Sergeant LaVecchia had no memo book entries regarding this incident.

CCRB Testimony

Sergeant LaVecchia was interviewed at the CCRB on February 2, 2012 (encl. 8A-D).

Sergeant LaVecchia had no recollection of the incident. He was given a brief synopsis of the incident but did not recall it. He did not recall anyone entering the stationhouse and asking for a CCRB form. He was shown a photograph of § 87(2)(b) but did not recognize him. He did not tell anyone, "Get out of here before I lock you up for loitering." He did not recall what other officers were in the stationhouse at the time of the incident. He was shown the roll call for the tour of the incident, but it did not refresh his recollection as to which other officers were present. He stated that there were no other officers listed on the roll call as having desk assignments.

NYPD Documents

Stop-and-Frisk Report (encl. 11A)

A stop-and-frisk report was prepared by Officer Suarez for this incident. It states that § 87(2)(b) was stopped on suspicion of criminal trespassing. The reasons for the stop are listed as: "Actions indicative of acting as a lookout," "Area has high incidence of reported offense," and "Proximity to scene of suspected offense." The report states that § 87(2)(b) was not frisked or searched.

Command Log (encl. 14A-G)

The 40th Precinct command log for December 2, 2011, indicates that Sergeant LaVecchia was the desk supervisor from 3:10 p.m. until 11:20 p.m., when he was relieved by Sergeant Michael Stolzer. The command log shows that Sergeant Tompkins conducted the roll call at 4:53 p.m.

Roll Call (encl. 12A-T)

The 40th Precinct roll call for Tour 3 on December 2, 2011, shows that Sergeant LaVecchia was the desk supervisor, and Sergeant Tompkins was the patrol supervisor.

Interrupted Patrol Log (encl. 13A-B)

The 40th Precinct interrupted patrol log indicates that seven officers were signed in at the stationhouse at the time § 87(2)(b) came to obtain a CCRB form. Two were white males: Officers Thomas Demkiw and Michael Lamastra.

Status of Civil Proceedings (encl. 15A)

As of July 13, 2012, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to this incident.

Civilian Criminal History (encl. 16A)

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History (encl. 2C)

§ 87(2)(b) has not filed any prior CCRB complaints.

Subject Officer CCRB Histories (encl. 2A-B)

- Officer Jhonatan Hernandez has been a member of the service for seven years and there are no substantiated CCRB allegations against him.
- Officer Roberto Suarez has been a member of the service for five years and there are no substantiated CCRB allegations against him.
- Sergeant Joseph Tompkins has been a member of the service for six years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officer

- § 87(2)(b) alleged that Officer Hernandez stopped him. However, Officer Hernandez and Officer Suarez stated that they both conducted the stop. § 87(2)(g)
- § 87(2)(b) stated that Officer Hernandez frisked him, searched him, and confiscated his PBA card. However, both officers stated that it was Officer Suarez who frisked § 87(2)(b)

§ 87(2)(b) and took the PBA card, though they denied that § 87(2)(b) was searched.
§ 87(2)(g)

- In a photo viewing, § 87(2)(b) identified Sergeant Tompkins as the officer who allegedly refused to process his complaint and threatened to arrest him. Sergeant Tompkins closely matches the description § 87(2)(b) provided of this officer. While he did not recall the interaction, he stated that he worked at the desk during his tour, and the command log shows that he conducted the roll call at 4:53 p.m. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Officer Jhonatan Hernandez stopped § 87(2)(b)

Allegation B – Abuse of Authority: Officer Roberto Suarez stopped § 87(2)(b)

§ 87(2)(b) alleged that, after he retrieved money from his apartment and exited his building, Officer Hernandez stopped him and asked him where he was coming from. Both officers acknowledged stopping § 87(2)(b) after seeing him enter and exit the building. Officer Suarez stated that they saw an unidentified individual let § 87(2)(b) in the front door, and that the officers then conducted a vertical patrol of the building. When the officers approached § 87(2)(b) in the stairwell, he walked downstairs and exited the building, at which point they stopped him. Officer Hernandez stated that the building is a drug-prone location, and because § 87(2)(b) was inside for between three and five minutes, the officers suspected that he had purchased drugs. Officer Hernandez did not mention § 87(2)(b) being let into the building by someone else or exiting the building upon seeing the officers. Both officers stated that they did not see § 87(2)(b) interact with anyone inside the building.

The stop-and-frisk report, prepared by Officer Suarez, states that § 87(2)(b) was stopped on suspicion of criminal trespassing. The reasons for the stop are listed as: “actions indicative of acting as a lookout,” “area has high incidence of reported offense,” and “proximity to scene of suspected offense.”

A stop requires reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210 (1976) (encl. 1A-K). Upon encountering a potentially unauthorized person within NYCHA property, an officer is to question the person regarding their presence in the building. If the person is unable or unwilling to explain his presence, the officer may instruct him to leave. The officer may then arrest the person for trespassing if he refuses to exit the building. NYPD Interim Order 23 (2010) (encl. 1L-O). Merely leaving a trespass affidavit building does not provide an objective credible reason for officers to approach an individual. People v. Almonte, 927 N.Y. 2d 818 (2011) (encl. 1P-Q).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: Officer Roberto Suarez frisked § 87(2)(b)

Allegation D – Abuse of Authority: Officer Roberto Suarez searched § 87(2)(b)

§ 87(2)(b) alleged that after stopping him, Officer Hernandez patted down his pants pockets and placed his hand inside his right pocket (as noted above, the investigation determined that this was a misidentification). The officers acknowledged that Officer Suarez frisked § 87(2)(b) but denied that he was searched. Officer Suarez stated that § 87(2)(b) refused to answer questions about whether he lived in the building, and that he put his hands in his pockets after being instructed not to do so. Officer Suarez then saw a bulge in § 87(2)(b)'s right pants pocket and frisked him to ensure that he did not have a weapon. The frisk revealed the bulge to be a cell phone. Officer Hernandez corroborated Officer Suarez's account of the frisk. The stop-and-frisk report indicates that § 87(2)(b) was neither frisked nor searched.

As noted above, exiting a trespass affidavit building does not provide an objective credible reason for officers to approach an individual. People v. Almonte (encl. 1P-Q). An order for a civilian to remove his hands from his pockets is a level-two inquiry requiring suspicion of imminent criminal activity. People v. Pinckney, 2011 N.Y. Slip Op 51649 (encl. 1R-U).

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Abuse of Authority: Officer Roberto Suarez seized § 87(2)(b) **s property.**

§ 87(2)(b) alleged that Officer Suarez confiscated the PBA card that § 87(2)(b) had received from § 87(2)(b) and told him that if § 87(2)(b) wanted it back, he could retrieve it from Officer Suarez. Officer Suarez confirmed that he took the card and returned it to the PBA.

The terms and conditions of a PBA card state that the PBA is the sole owner of the card, and that the holder's temporary possession of the card is revocable upon an officer's demand. § 87(2)(g)

Allegation F – Abuse of Authority: Sergeant Joseph Tompkins did not process § 87(2)(b) s complaint regarding an officer.

Allegation G – Abuse of Authority: Sergeant Joseph Tompkins threatened to arrest

§ 87(2)(b)

§ 87(2)(b) alleged that when he went to the 40th Precinct stationhouse to obtain a CCRB complaint form, Sergeant Tompkins refused to give him the form despite multiple requests and said, “Get out of here before I lock you up for loitering.” § 87(2)(b) who was on the phone with § 87(2)(b) at the time, stated that he heard Sergeant Tompkins repeatedly refuse to give § 87(2)(b) the form and threaten to arrest him for loitering if he did not leave the precinct. Sergeant Tompkins had no recollection of the incident, and did not recall being asked for a CCRB form or instructing anyone to leave the precinct.

According to Section 207-31 of the Patrol Guide, officers are required to provide a civilian complaint report to an individual who appears at a command in person to make a complaint of misconduct against an officer (encl. 1V-BB). Under New York penal law, a person is guilty of loitering in the following cases: 1) he loiters or remains in a public place for the purpose of gambling, 2) he loiters, remains, or congregates with others while masked or disguised, 3) he loiters or remains in or about a school, college, university, or children’s camp without a legitimate reason to do so, or 4) he loiters or remains in a transportation facility in order to solicit business or engage in a musical performance (encl. 1CC-LL). § 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

Team: _____

:

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date